

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

August 15, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 23, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing to you to request a sales tax letter ruling from Illinois. The issues in question relate to the sale and installation of merchandise that has been purchased in our store and will result in a capital improvement to our customer's home.

As you may be aware, COMPANY is a retailer of various home improvement products. For certain products, COMPANY offers several different kinds of installation programs. The programs fall into two different categories, one is our PROGRAM1, and the second is our PROGRAM2. There are several differences between the programs, but for any given product, only one program will apply. For either program, the installations are subcontracted out...installations are not performed by COMPANY employees.

Under our PROGRAM1, the customer will be billed one lump sum amount for both materials and labor. The materials for these programs, do not come out of COMPANY's inventory, but instead are both 'furnished and installed' by our installer.

Under our PROGRAM2, the customer is billed two separate amounts, one for the materials purchased and a separate amount for the installation labor. The materials for these programs do come out of our 'purchased for resale' inventory or are special ordered from vendors who possess our resale certificate.

The reason for this request relates to our PROGRAM2. We are in the process of making major software enhancements, and before we make these changes to our systems, we would like clarification of several issues. We would like to present a scenario or two, and get a binding letter ruling from the state.

In the first scenario, a customer comes into the store and wants to purchase an exterior door, and says that he wants the door installed. The customer may choose a door from our stock in the store, or we may have to special order the door, but in any case, the door will come out of our tax free inventory. The store will prepare a Customer Service Agreement. This agreement will list the materials that are being ordered for the installation, in this case, the door, and the price related to the items being installed.

The second section of the Customer Service Agreement will list the labor necessary for the installation, and the associated labor charges. At the end of the Customer Service Agreement the total charge will be shown, including the materials and labor as separate line items. If the materials were taxable to the customer, this is where tax on the materials would be shown.

For the second scenario, the same facts apply as above, with one exception. To go along with the new door, the customer decides to purchase a new door lock, and a peephole to be installed in the new door. In addition, the customer decides to take the door accessories with him to avoid any possibility that they might be out of stock at the time the installer drops by the store to pick up the door. This could be several weeks later if the door has to be special ordered. How are the taxes related to the door accessories being taken out of the store to be handled? Are they considered to be the sale of tangible personal property, and thus taxable to the customer? If it is decided that COMPANY is the contractor and responsible for taxes on the materials installed into real property, how might this effect any door accessories carried out of the store by the customer?

Thank you in advance for your prompt attention to our request for a ruling on these scenarios. If you need any additional information or have any other concerns or comments, please contact me.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Your letter did not provide sufficient information regarding the nature of your transactions for the Department to provide a specific response. However, we hope the following information is helpful.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

In Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. The organization must obtain and present this number to a retailer,

however, before it can make a tax-free purchase. Suppliers selling tangible personal property to such exempt organizations must retain the "E" number in order to document the exempt sale.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax. Items which are purchased tax-free because of their intended incorporation into real estate owned by an exempt organization, but which are not, in fact, incorporated into real estate owned by an exempt organization, are also subject to tax.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.